

# Calendar No. 1957

82D CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 2040

## JOSEPHINE F. GARRETT

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JULY 1 (legislative day, JUNE 27), 1952.—Ordered to be printed

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Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### R E P O R T

[To accompany H. R. 4188]

The Committee on the Judiciary, to which was referred the bill (H. R. 4188) for the relief of Josephine F. Garrett, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill do pass.

#### AMENDMENT

On page 1, line 6, strike the figures "\$140.95" and insert in lieu thereof the figures "\$390".

#### PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of \$390 to Josephine F. Garrett, of Seattle, Wash., in full settlement of her claim for property damage sustained by her in Seattle on November 21, 1947, when her parked automobile was struck by a United States Army vehicle.

#### STATEMENT

On November 21, 1947, an enlisted man of the Army attached to the Forty-fifth Transportation Truck Company, Fort Lawton, Wash., was issued a trip ticket for the use of an Army truck on official business. Although he completed the authorized use of the truck at about 4:45 p. m. and was instructed to return the vehicle to the motor pool, the enlisted man took the vehicle and drove it from Fort Lawton to Seattle, Wash. He spent from about 6 p. m. until after 10 p. m. drinking alcoholic beverages, visiting with friends, and carousing in Seattle. At about 10:30 p. m. of that day, while driving north on Jackson Street in Seattle at a speed of approximately 50 miles per hour,

he sideswiped a 1937 De Soto sedan owned by Mrs. Josephine F. Garrett, which was properly parked next to the curb on Jackson Street.

Mrs. Garrett filed a claim with the Department of the Army on February 20, 1948, for the damage caused to her automobile in this accident. The claim was filed in the amount of \$140.95, which was the estimate of the cost of repairs given to Mrs. Garrett. The bill which she was ultimately required to pay totaled more than \$390. The claim which was filed by Mrs. Garrett with the Department of the Army could not be approved by the Department for the reason that the driver of the Army vehicle was not acting within the scope of his employment at the time of the accident. Private legislation is, therefore, the only means by which Mrs. Garrett may receive compensation for the property damage from the Government of the United States.

The report of the Department of the Army states that the evidence in this case clearly establishes that this accident and the resulting damage to Mrs. Garrett's automobile was caused solely by the negligence of the driver of the Army truck. The Department of the Army, therefore, has no objection to the enactment of this legislation.

The committee believes that this claimant is entitled to receive compensation for the property damage which she has suffered and it therefore recommends favorable consideration of the legislation. The committee has recommended private relief legislation in similar cases in the Eighty-first Congress (H. R. 1611, 81st Cong., 2d sess., for the relief of Walter E. Miller; H. R. 7454, 81st Cong., 2d sess., for the relief of Robert C. Waters and others; H. R. 5972, 81st Cong., 2d sess., for the relief of Ivar G. Johnson).

Attached to this report and made a part thereof is the report of the Department of the Army submitted in connection with this legislation; a letter addressed to the committee from Senator Warren G. Magnuson, and a copy of the repair bill paid by Mrs. Garrett.

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DEPARTMENT OF THE ARMY,  
Washington, D. C., September 6, 1950.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CELLER: The Department of the Army would have no objection to the enactment of H. R. 9255, Eighty-first Congress, a bill for the relief of Josephine F. Garrett, if it should be amended as hereinafter recommended.

This bill would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Josephine F. Garrett, Seattle, Washington, the sum of \$390 \* \* \* in full settlement of all claims of the said Josephine F. Garrett against the United States for property damage sustained by her in Seattle, Washington, on November 21, 1947, when her parked automobile was struck by a United States Army vehicle being driven by an enlisted man of the Army not acting within the scope of his office or employment.

On November 21, 1947, an enlisted man of the Army attached to the Forty-fifth Transportation Truck Company, Fort Lawton, Wash., was issued a trip ticket for the use of an Army truck on official business. He completed the authorized use of the truck at about 4:45 p. m. and was instructed to return the vehicle to the motor pool. Thereafter, and contrary to such instructions, he took the vehicle and drove it from Fort Lawton to Seattle, Wash. From about 6 p. m. until after 10 p. m. he engaged in drinking alcoholic beverages, visiting with friends and carousing in Seattle. At 10:30 p. m., while driving north on Jackson Street in Seattle at a speed of approximately 50 miles per hour, he side-

swiped a 1937 De Soto sedan owned by Mrs. Josephine F. Garrett, which was properly parked next to the curb on said street, damaging such automobile in the amount of \$140.95.

A claim filed by Mrs. Garrett with the Department of the Army on February 20, 1948, in the amount of \$140.95, for the damage caused to her automobile in this accident could not be approved under any statute available to the Department for the reason that the driver of the Army vehicle was not at the time of the accident acting within the scope of his employment as a soldier.

The evidence in this case clearly establishes that this accident and the resulting damage to Mrs. Garrett's automobile were caused solely by the negligence of the driver of the Army truck in operating such vehicle at an excessive speed and in a reckless manner. However, as the Army vehicle was at the time of the accident being operated without authority and on a personal mission, there is no legal basis for a claim by Mrs. Garrett against the United States on account of the damage caused to her car. Nevertheless, in view of the circumstances of this case, and as the damage to the claimant's automobile did not result from any fault or negligence on her part, the Department of the Army would have no objection to the enactment of H. R. 9255 if it should be amended to grant an award to the claimant in the amount of \$140.95, the amount in which her claim was filed.

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 921), as revised and codified by the act of June 25, 1948 (62 Stat 983; 28 U. S. C. 2672), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), for the reason that the soldier who caused the damage to her automobile was not at the time acting within the scope of his employment.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr., *Secretary of the Army.*

UNITED STATES SENATE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*June 6, 1952,*

Re H. R. 4188

SENATE JUDICIARY COMMITTEE,  
*Senate Office Building, Washington, D. C.*  
(Attention: Mr. Wayne Smithy.)

GENTLEMEN: H. R. 4188 passed the House on April 29, 1952, and currently is before the Senate Committee on the Judiciary.

The bill was introduced to reimburse Mrs. Josephine Garrett for damages suffered when an enlisted man in the Army, while under the influence of alcohol and while driving an Army vehicle without authority, sideswiped Mrs. Garrett's automobile. Due to a discrepancy in the Department of the Army's report, the House committee amended the bill to read "\$140.95" rather than "\$390" which was the amount for which the bill was originally introduced.

After a discussion with Colonel Rhodes, of the Judge Advocate General's Office, it was discovered that the Army had based their report upon a claim filed by Mrs. Garrett in 1948, which claim was filed after receiving a garage estimate, rather than the actual bill for the damages. When the bill was rendered by the garage it came to \$399.91, and thus the bill was put in for \$390. I am enclosing a copy of the receipted bill for your information.

It is my understanding that the Army would have no objection to the larger figure and accordingly I would like to have you amend the bill to read "\$390," instead of "\$140.95," which is the present figure.

Very truly yours,

WARREN G. MAGNUSON,  
*United States Senate.*

## PARAMOUNT AUTOMOTIVE SERVICE

SEATTLE, WASH.

REPAIR ORDER No. 223

Date: Jan. 6, 1949

Name: Mrs. Garrett.  
Address: 702 Twenty-third SW.  
Phone: CA 7036.

Make of car: De Soto.  
Model: S3.  
Mileage: 79122.  
License: A-158-310.

Instructions	Amount	Quantity	Part No.	Description	Cost
Overhaul front end.....	\$17.50	1	120371	Nut.....	\$0.08
Install clutch.....	16.50	1	16668164	Bushing.....	2.56
Repair wipers—install 2 motors.....	7.50	1	667880	Lamp.....	-----
Install front bumper.....	3.00	1	670606	Cable and socket.....	4.25
Overhaul generator.....	4.50	1	-----	Handle.....	-----
Install shocks—repair shock supports and weld.....	6.00	1	-----	Lock and key.....	-----
Install headlight lens.....	-----	1	-----	Stud for shock.....	1.05
Reline brakes.....	-----	1	-----	Bumper bar.....	20.65
Aline front end for caster and camber and toe-in.....	19.50	1	-----	Bar.....	5.00
		2	1030F	Bolts and nuts—bumper.....	2.00
		2	1031F	Shocks.....	10.50
		2	K110	do.....	10.50
		2	K51	Kit.....	4.20
		1	-----	do.....	2.55
		1	-----	Deck lid.....	30.65
		1	-----	Handle for hood.....	5.85
Labor.....	74.50			Total.....	99.84
Material.....	99.84				
Tax.....	5.30				
Total.....	179.64				

(Marked; "Paid in full.")

## PARAMOUNT AUTOMOTIVE SERVICE

SEATTLE, WASH.

REPAIR ORDER No. 224

Date: January 6, 1949.

Name: Mrs. Garrett.  
Address: 702 Twenty-third SW.  
Phone: CA 7036.

Make of car: De Soto.

Instructions	Amount	Quantity	Part No.	Description	Cost
Install all window glass.....	\$16.25	-----	-----	Machine 4 brake drums.....	\$6.00
Install 1 window regulator.....	3.85	-----	-----	Oversize shoes and lining.....	9.50
Complete body work and paint.....	56.00	-----	-----	Window glass.....	31.15
Install hood handle.....	3.00	1	-----	Clutch plate.....	12.16
Install window regulator, right front door.....	3.75	1	-----	Pressure plate.....	12.75
		1	-----	Clutch release.....	3.45
		1	-----	Fender.....	14.50
		1	-----	Fan belt.....	2.05
		4	-----	Brushes.....	.80
		1	-----	Windshield frame and rubber.....	10.75
		1	784891	Window regulator.....	4.25
		1	-----	Headlight lens.....	-----
		2	-----	Swype motors.....	13.50
		2 feet	-----	Swype hose.....	.60
		1	-----	Swype arm.....	1.50
		1	-----	Bulb.....	1.15
		6	-----	Plugs.....	4.50
		1	-----	Window regulator.....	3.50
Labor.....	82.85			Total.....	131.11
Material.....	131.11				
Tax.....	6.31				
Total.....	220.27				

(Marked: "Paid in full.")